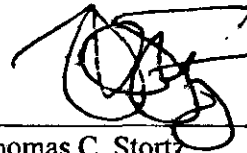


3. Neither Eldorado nor Level 3 has agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into any such agreements in the future.
4. Neither Eldorado nor Level 3, nor any other party to this application, is subject to a denial of federal benefits under Section 5301 of the Anti-Drug Abuse Act of 1988, as amended.



Thomas C. Stortz

Executive Vice President, Secretary, and
Chief Legal Officer, Level 3
Communications, Inc.

Executive Vice President, Secretary, and
Chief Legal Officer, Eldorado
Acquisition Three, LLC

1025 Eldorado Boulevard
Broomfield, Colorado 80021
+1 720 888 5127 tel

9 June 2006

LIST OF ATTACHMENTS

- Attachment A: Purchase Agreement and Plan of Merger (without Schedules)**
- Attachment B: TelCove Corporate Organization Chart**
- Attachment C: Pre-Transaction Organizational Structures of the Relevant Parts of Level 3 Communications, Inc., and TelCove, Inc.**
- Attachment D: Step 1 in the Acquisition of TelCove, Inc., by Level 3 Communications, Inc.—Merger of TelCove, Inc., into Eldorado Acquisition Three, LLC**
- Attachment E: Step 2 in the Acquisition of TelCove, Inc., by Level 3 Communications, Inc.—Contribution of Membership Interests to Level 3 Financing, Inc.**
- Attachment F: Step 3 in the Acquisition of TelCove, Inc., by Level 3 Communications, Inc.—Contribution of Membership Interests to Level 3 Communications, LLC**
- Attachment G: Post-Transaction Organizational Structures of the Relevant Parts of Level 3 Communications, Inc.**

EXECUTION COPY

AGREEMENT AND PLAN OF MERGER

among

LEVEL 3 COMMUNICATIONS, INC.,

ELDORADO ACQUISITION THREE, LLC

and

TELCOVE, INC.

Dated as of April 30, 2006

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- A Form of Opinion of Counsel to Parent
- B Form of Opinion of Counsel to the Company
- C Form of Akin Gump Strauss Hauer & Feld LLP Tax Opinion
- D Form of Willkie Farr & Gallagher LLP Tax Opinion
- E Form of Company Tax Opinion Backup Representation Letter
- F Form of Parent Tax Opinion Backup Representation Letter

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (the "Agreement"), dated as of April 30, 2006, by and among Level 3 Communications, Inc., a Delaware corporation ("Parent"), Eldorado Acquisition Three, LLC, a Delaware limited liability company and a direct, wholly owned subsidiary of Parent ("Merger Sub"), and TelCove, Inc., a Delaware corporation (the "Company").

W I T N E S S E T H:

WHEREAS, Parent and the Company desire to effect a business combination by means of the merger of the Company with and into Merger Sub, with Merger Sub continuing as the surviving entity (the "Merger");

WHEREAS, the managers of Merger Sub and the Board of Directors of the Company have approved the Merger upon the terms and subject to the conditions set forth herein; and

WHEREAS, pursuant to the Merger, among other things, and subject to the terms and conditions of this Agreement, all of the issued and outstanding capital stock of the Company ("Company Capital Stock") and warrants to purchase Company Common Stock shall be converted into the right to receive a combination of cash and shares of common stock of Parent or otherwise cancelled;

WHEREAS, for United States federal income tax purposes, the Parties intend that the Merger shall qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements hereinafter contained, the parties hereby agree as follows:

ARTICLE I.

DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

"Action" -- See Section 5.18 hereof;

"Adjusted Parent Stock Price" shall mean the average of the volume weighted sales prices per share of Parent Common Stock as reported by the NASDAQ Stock Market for the ten trading-day period ending upon the trading day immediately preceding the third trading day prior to the Closing Date;

"Affiliate" shall mean, as to any Person, any other Person that controls, is controlled by, or is under common control with, such Person;

"Agreement" -- See Preamble hereto;

"Aggregate Cash Consideration" shall mean \$445,000,000;

"Aggregate Merger Consideration" shall mean the Aggregate Share Consideration and the Aggregate Cash Consideration collectively;

"Aggregate Share Consideration" shall mean the aggregate number of shares of Parent Common Stock equal to the sum of (i) the quotient of (A) the Share Value Factor divided by (B) the Parent Stock Price and (ii) the quotient of (A) Exercise Price Consideration divided by (B) the Adjusted Parent Stock Price. For avoidance of doubt, the minimum aggregate number of shares of Parent Common Stock to be issued pursuant to this Agreement shall be 110,590,278;

"Business Day" shall mean a day other than a Saturday, Sunday or other day on which banks in the State of New York are required or authorized to close;

"Cash Consideration" -- See Section 4.1(b)(ii) hereof;

"Cash Exchange Ratio" -- See Section 4.1(b)(ii) hereof;

"Certificate of Merger" -- See Section 2.2 hereof;

"Certificates" -- See Section 4.2(a) hereof;

"Closing" -- See Section 4.7 hereof;

"Closing Date" -- See Section 4.7 hereof;

"Code" -- See Recitals hereto;

"Common Stock Exchange Ratio" -- See Section 4.1(b)(i) hereof;

"Company" -- See Preamble hereto;

"Company Common Stock" shall mean shares of common stock, par value \$0.01 per share, of the Company;

"Company Material Adverse Effect" shall mean any event, change, circumstance, effect, development or state of facts that, individually or in the aggregate, is or is reasonably likely to become, materially adverse to the business, assets, properties, condition (financial or otherwise), liabilities or results of operations of the Company and its Subsidiaries, taken as a whole; provided, however, that Company Material Adverse Effect shall not include the effect of any event, change, circumstance, effect, development or state of facts arising out of or attributable to (i) general economic conditions, (ii) the industry in which the Company and its Subsidiaries operate so long as such event, change, circumstance, effect, development or state of facts does not affect the Company and its Subsidiaries in a materially disproportionate manner when compared to the effect of such event, change, circumstance, effect, development or state of facts on other Persons in the industry in which the Company and its Subsidiaries operate, (iii)

any act or omission by the Company taken with the prior written consent of Parent in contemplation of the Merger, (iv) any costs or expenses reasonably incurred or accrued in connection with the Merger, (v) any act or omission of the Company taken consistent with the terms of this Agreement or (vi) clearly shown to be directly resulting from this Agreement and the announcement or performance hereof and the transactions contemplated hereby, including without limitation, the direct impact thereof on relationships with customers, suppliers or employees;

"Company Warrants" shall mean warrants to purchase shares of Company Common Stock;

"Contract" -- See Section 5.19(c) hereof;

"Company Options" shall mean options exercisable for shares of Company Common Stock;

"Company Organizational Documents" shall mean the Amended and Restated Certificate of Incorporation and the Bylaws of the Company, together with all amendments thereto;

"Company Preferred Stock" shall mean preferred stock, par value \$0.01 per share. of the Company;

"Company Property" -- See Section 5.12(b) hereof;

"Company Welfare Plans" -- See Section 8.2(b) hereof;

"Confidentiality Agreement" -- See Section 9.3 hereof;

"Continuing Employees" -- See Section 8.2 hereof;

"Customer Contracts" -- See Section 5.19(c) hereof;

"Debt" shall mean long-term debt (plus the current portion thereof) and short-term debt of the Company or any Subsidiary thereof, in each case determined in accordance with GAAP, including commercial paper, deferred derivative, interest rate swaps and capital leases;

"DGCL" shall mean the Delaware General Corporation Law;

"Drag-Along Notice" -- See Section 7.8 hereof;

"Effective Date" -- See Section 2.2 hereof;

"Effective Time" -- See Section 2.2 hereof;

"Employee Benefit Plans" -- See Section 5.20(a) hereof;

"Environmental Laws" -- See Section 5.25(a) hereof;

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended;

“ERISA Affiliate” -- See Section 5.20(a) hereof;

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder;

“Excluded Shares” -- See Section 4.1(a) hereof;

“Executive Officer Employment Agreements” shall mean the employment agreements between each of the individuals on Schedule 1.2 and Level 3 Communications LLC, dated as of the date hereof;

“Exercise Price Consideration” shall mean the aggregate amount of cash received by the Company after the date hereof and prior to the Effective Time with respect to the exercise of Company Warrants;

“Existing Policy” -- See Section 8.4(c) hereof;

“Financial Statements” -- See Section 5.8 hereof;

“Fully-Diluted Shares” shall mean the sum of (i) the aggregate number of shares of Company Common Stock issued and outstanding immediately prior to the Effective Time, plus (ii) all additional shares of Company Common Stock that would be outstanding immediately prior to the Effective Time assuming (A) the cashless exercise immediately prior to the Effective Time of all then outstanding Company Warrants pursuant to Section 3.02(d) of the applicable Warrant Agreement and (B) a Current Market Price of One Share of Common Stock (as defined in the applicable Warrant Agreement) equal to the Per Share Merger Consideration. For the avoidance of doubt, in respect of each Company Warrant with an exercise price per share immediately prior to the Effective Time in excess of the Per Share Merger Consideration, zero additional shares of Company Common Stock shall be deemed outstanding pursuant to such Company Warrant for purposes of clause (ii) above;

“GAAP” shall mean United States generally accepted accounting principles;

“Governmental Entity” shall mean any federal, state, local or foreign governmental, regulatory or administrative authority, branch, agency or commission or any court, tribunal or judicial body;

“Hazardous Materials” -- See Section 5.25 hereof;

“HLHZ” -- See Section 5.26 hereof;

“HSR Act” -- See Section 5.4 hereof;

“Indemnified Person” -- See Section 8.4(a) hereof;

"Intellectual Property" shall mean all of the following, owned or used by the Company and its Subsidiaries: material (i) trademarks and service marks, trade dress, product configurations, trade names and other indications of origin, applications or registrations in any jurisdiction pertaining to the foregoing and all goodwill associated therewith; (ii) inventions (whether or not patentable), discoveries, improvements, ideas, know-how, formula methodology, processes, technology, software (including password unprotected interpretive code or source code, object code, development documentation, programming tools, drawings, specifications and data) and applications and patents in any jurisdiction pertaining to the foregoing, including re-issues, continuations, divisions, continuations-in-part, renewals or extensions; (iii) trade secrets, including confidential information and the right in any jurisdiction to limit the use or disclosure thereof; (iv) copyrighted and copyrightable writings, designs, software, mask works or other works, applications or registrations in any jurisdiction for the foregoing and all moral rights related thereto; (v) database rights; (vi) Internet Web sites, domain names and applications and registrations pertaining thereto and all intellectual property used in connection with or contained in all versions of the Web sites of the Company and its Subsidiaries; (vii) rights under all agreements relating to the foregoing; (viii) books and records pertaining to the foregoing; and (ix) claims or causes of action arising out of or related to past, present or future infringement or misappropriation of the foregoing;

"Interim Balance Sheet" -- See Section 5.8 hereof;

"IRU" -- See Section 5.9(b) hereof;

"Knowledge" shall mean, with respect to the Company, the actual conscious knowledge of the executives of the Company listed on Schedule 1.3 after due inquiry of the senior employees of the Company and its Subsidiaries who have administrative or operational responsibility for the particular subject matter in question.

"Leased Real Property" -- See Section 5.12(b) hereof;

"Leases" -- See Section 5.12(b) hereof;

"Letter of Transmittal" -- See Section 4.2(a) hereof;

"Licenses and Permits" -- See Section 5.16(a) hereof;

"Lien" shall mean any mortgage, pledge, security interest, encumbrance or title defect, lease, lien (statutory or other), conditional sale agreement, claim, charge, limitation or restriction;

"LLCA" shall mean the Delaware Limited Liability Company Act;

"Merger" -- See Recitals hereto;

"Merger Consideration" shall mean, with respect to Company Common Stock, the Share Consideration and the Cash Consideration, collectively, and with respect to Company Warrants, the Warrant Consideration, collectively;

"Merger Sub" -- See Preamble hereto;

"Multiemployer Plan" -- See Section 5.20(c) hereof;

"Owned Real Property" -- See Section 5.12(a) hereof;

"Parent" -- See Preamble hereto;

"Parent Common Stock" -- See Section 4.1(b) hereof;

"Parent Material Adverse Effect" shall mean any event, change, circumstance, effect, development or state of facts that, individually or in the aggregate, is or is reasonably likely to become, materially adverse to the business, assets, properties, condition (financial or otherwise), liabilities or results of operations of Parent and its Subsidiaries, taken as a whole; provided, however, that Parent Material Adverse Effect shall not include the effect of any event, change, circumstance, effect, development or state of facts arising out of or attributable to (i) general economic conditions, (ii) the industry in which Parent and its Subsidiaries operate so long as such event, change, circumstance, effect, development or state of facts does not affect Parent and its Subsidiaries in a materially disproportionate manner when compared to the effect of such event, change, circumstance, effect, development or state of facts on other Persons in the industry in which Parent and its Subsidiaries operate, (iii) any act or omission by Parent taken with the prior written consent of the Company in contemplation of the Merger, (iv) any costs or expenses reasonably incurred or accrued in connection with the Merger, (v) any act or omission of Parent taken consistent with the terms of this Agreement or (vi) clearly shown to be directly resulting from this Agreement and the announcement or performance hereof and the transactions contemplated hereby, including without limitation, the direct impact thereof on relationships with customers, suppliers or employees;

"Parent Organizational Documents" shall mean the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws of Parent, together with all amendments thereto;

"Parent SEC Reports" -- See Section 6.7(a) hereof;

"Parent Stock" shall mean the Parent Common Stock and any other shares of capital stock of Parent that are convertible into or exchangeable for shares of Parent Common Stock;

"Parent Stock Price" shall mean the average of the volume weighted sales prices per share of Parent Common Stock as reported by the NASDAQ Stock Market for the ten trading-day period ending upon the trading day immediately preceding the third trading day prior to the Closing Date; provided, however, that in no event shall the Parent Stock Price be less than \$3.84 or more than \$5.76;

"Parties" shall mean Parent, Merger Sub and the Company;

"Pension Plans" -- See Section 5.20(a) hereof;

"Per Share Merger Consideration" shall mean the quotient of (i) (A) the product of the Aggregate Share Consideration and the Adjusted Parent Stock Price plus (B) the Aggregate Cash Consideration plus (C) the aggregate exercise price of all outstanding Company Warrants outstanding immediately prior to the Effective Time divided by (ii) the aggregate number of shares of Company Common Stock and the number of shares of Company Common Stock issuable upon exercise for cash of the Company Warrants, in each case outstanding immediately prior to the Effective Time;

"Permitted Liens" shall mean means (a) liens for utilities and current Taxes not yet due and payable, (b) mechanics', carriers', workers', repairers', materialmen's, warehousemen's, lessor's, landlord's and other similar liens arising or incurred in the ordinary course of business not yet due and payable, (c) liens for Taxes, assessments, or governmental charges or levies on a Person's properties if the same shall not at the time be delinquent or thereafter can be paid without penalty or are being contested in good faith by appropriate proceedings and for which appropriate reserves have been included on the balance sheet of the applicable Person, (d) easements, restrictive covenants and similar encumbrances or impediments against any assets or properties of an entity and which individually or in the aggregate do not materially interfere with the business of such entity or the operation of the property as currently conducted to which they apply, (e) minor irregularities and defects of title which individually or in the aggregate do not materially interfere with an entity's business or the operation of the property as currently conducted to which they apply, (f) Liens disclosed on the existing title policies, title commitments and/or surveys which have been previously provided or made available to Parent, none of which materially interfere with the business of the Company or its Subsidiaries or the operation of the property as presently conducted to which they apply, (g) Liens granted in respect of any Debt or securing any obligations with respect thereto and other Liens as set forth on Schedule 1.5, (h) Liens arising out of pledges or deposits under worker's compensation laws, unemployment insurance, old age pensions or other social security or retirement benefits or similar legislation, (i) deposits securing liability to insurance carriers under insurance or self-insurance arrangements, (j) deposits to secure the performance of bids, tenders, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business, (k) Liens arising from protective filings and (l) Liens in favor of a banking institution arising as a matter of applicable law encumbering deposits (including the right of set-off) held by such banking institution incurred in the ordinary course of business and which are within the general parameters customary in the banking industry;

"Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or Governmental Entity;

"Plan Effective Date" -- See Section 5.20(a) hereof;

"Proceeding" -- See Section 8.4(a) hereof;

"Registered Intellectual Property" -- See Section 5.14(b) hereof;

"Registration Statement" -- See Section 9.2 hereof;

"Required Merger Stockholder Vote" -- See Section 5.5 hereof;

"SEC" shall mean the U.S. Securities and Exchange Commission;

"Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder;

"Share Consideration" -- See Section 4.1(b)(i) hereto;

"Share Value Factor" shall mean \$637,000,000;

"Software" -- See Section 5.15(a) hereof;

"Stockholders" shall mean the holders of Company Common Stock, excluding holders of any Excluded Shares;

"Subsidiary" means, with respect to any Person, as the case may be, any entity, whether incorporated or unincorporated, of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by such party or by one or more of its respective Subsidiaries or by such party and any one or more of its respective Subsidiaries;

"Surviving Company" -- See Section 2.1 hereof;

"Tail Period" -- See Section 8.4(c) hereof;

"Tax Return" shall mean any report, return, information return, filing, claim for refund or other information, including any schedules or attachments thereto, and any amendments to any of the foregoing required to be supplied to a taxing authority in connection with Taxes;

"Taxes" shall mean all federal, state, local or foreign taxes, including, without limitation, income, gross income, gross receipts, production, excise, employment, sales, use, transfer, *ad valorem*, value added, profits, license, capital stock, franchise, severance, stamp, withholding, Social Security, employment, unemployment, disability, worker's compensation, payroll, utility, windfall profit, custom duties, personal property, real property, registration, alternative or add-on minimum, estimated and other taxes, governmental fees or like charges of any kind whatsoever, including any interest, penalties or additions thereto; and "Tax" shall mean any one of them;

"Third Party Expenses" -- See Section 14.5 hereof;

"Vendor Contracts" -- See Section 5.19(c) hereof;

"WARN" -- See Section 5.24(c) hereof;

"Warrant Consideration" -- See Section 4.1(e) hereof;

“Warrantholder” shall mean a holder of Company Warrants; and

“Warrant Agreements” shall mean the Warrant Agreement, dated as of April 8, 2004, between the Company and Wells Fargo Bank, N.A., as warrant agent, and the Management Warrant Agreement, dated as of April 8, 2004, between the Company and Wells Fargo Bank, N.A., as warrant agent.

ARTICLE II.

THE MERGER

Section 2.1. The Merger. Upon the terms and subject to the conditions hereof, on the Effective Date, Company shall be merged with and into Merger Sub and the separate existence of the Company shall thereupon cease, and Merger Sub, as the surviving entity in the Merger (the “Surviving Company”), shall by virtue of the Merger continue its existence under the laws of the State of Delaware. The Merger shall have the effects set forth in Section 18-209 of the LLCA. Without limiting the generality of the foregoing, and subject thereto, at the Effective Date, all the property, rights, privileges, powers, and franchises of the Company and Merger Sub shall vest in the Surviving Company, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Company.

Section 2.2. Effective Date of the Merger. The Merger shall become effective on the date (the “Effective Date”) and at the time (the “Effective Time”) when a properly executed Certificate of Merger (the “Certificate of Merger”) is duly filed with the Secretary of State of the State of Delaware. The Parties shall cause the Certificate of Merger to be executed and filed as aforesaid on the Closing Date upon the satisfaction or waiver of the conditions contained in Articles X, XI and XII hereof.

Section 2.3. Reorganization. This Agreement is intended to constitute a “plan of reorganization” with respect to the Merger for United States federal income tax purposes pursuant to which, for such purposes, the Merger is to be treated as a “reorganization” under Section 368(a) of the Code (to which each of Parent and the Company are to be parties under Section 368(b) of the Code).

ARTICLE III.

THE SURVIVING COMPANY

Section 3.1. Certificate of Formation. The certificate of formation of Merger Sub shall be the certificate of formation of the Surviving Company after the Effective Date, and thereafter may be amended as provided therein or by law.

Section 3.2. Operating Agreement. The operating agreement of Merger Sub as in effect on the Effective Date shall be the operating agreement of the Surviving Company, and thereafter may be amended as provided therein or by law.

Section 3.3. Managers; Officers. The managers of Merger Sub immediately prior to the Effective Date shall be the managers of the Surviving Company and the officers of the Company immediately prior to the Effective Date shall be the officers of the Surviving Company, in each case until their respective successors are duly elected and qualified or until their death, resignation or removal in accordance with the LLCA and the certificate of formation and operating agreement of the Surviving Company.

ARTICLE IV.

CONVERSION OF SHARES

Section 4.1. Merger Consideration; Effect on Capital Stock. Subject to the terms and conditions of this Agreement, as of the Effective Date, by virtue of the Merger and without any action on the part of any holder of any Company Common Stock, the following shall occur:

(a) All shares of Company Common Stock issued and outstanding immediately prior to the Effective Date that are held by the Company, and any shares of Company Common Stock issued and outstanding immediately prior to the Effective Date owned by Parent, Merger Sub or any other Subsidiary of Parent, shall cease to be outstanding, shall be cancelled and retired without payment of any consideration therefor and shall cease to exist (the "Excluded Shares").

(b) Subject to Sections 4.1(a), 4.1(c), and 4.4 hereof, each share of Company Common Stock issued and outstanding immediately prior to the Effective Date, shall be converted into the right to receive:

(i) that number of fully paid and nonassessable shares (the "Share Consideration") of common stock, par value \$0.01 per share, of Parent (the "Parent Common Stock") equal to the quotient of the Aggregate Share Consideration divided by the number of Fully-Diluted Shares, but excluding any Excluded Shares (the "Common Stock Exchange Ratio"); and

(ii) an amount in cash (the "Cash Consideration") equal to the quotient of the Aggregate Cash Consideration divided by the number of Fully-Diluted Shares, but excluding any Excluded Shares (the "Cash Exchange Ratio").

(c) In the event of any stock dividend, stock split, reclassification, recapitalization, combination or exchange of shares, or other similar transaction, with respect to Parent Common Stock after the date hereof and prior to the Effective Date, the Common Stock Exchange Ratio shall be adjusted accordingly so as to maintain the relative proportionate interests of the holders of Company Capital Stock and the holders of Parent Stock.

(d) Each membership interest of Merger Sub issued and outstanding immediately prior to the Effective Date shall continue as one membership interest, of the Surviving Company, which shall constitute the only outstanding membership interest of the Surviving Company.

(e) At the Effective Time, each outstanding Company Warrant shall by virtue of the Merger and without any action on the part of the holder thereof, the Company, Parent or Merger Sub, be cancelled and shall only entitle the holder thereof to receive, as soon as reasonably practicable after the Effective Date upon compliance with Section 4.2(c) hereof, from Parent or the Surviving Company, the consideration such Company Warrant would have received if such holder would have effected a cashless exercise of such Company Warrant pursuant to Section 3.02(d) of the applicable Warrant Agreement immediately prior to the Effective Time (and assuming a Current Market Price of One Share of Common Stock (as defined in the applicable Warrant Agreement) equal to the Per Share Merger Consideration), and the shares of Company Common Stock issued upon such cashless exercise were converted in the Merger pursuant to Section 4.1(b) hereof; provided, however, that any Company Warrant with an exercise price per share in excess of the Per Share Merger Consideration shall terminate and cease to be exercisable as of the Effective Date and no holder of any such Company Warrant shall be entitled to any payment with respect to such termination (the "Warrant Consideration").

Section 4.2. Exchange of Certificates.

(a) As soon as reasonably practicable after the Effective Date, Parent shall mail to each holder of Company Common Stock (other than holders of Excluded Shares) and Company Warrant (i) a letter of transmittal containing customary provisions (the "Letter of Transmittal"), which shall specify that delivery shall be effected, and risk of loss and title to the certificate or certificates representing such Company Common Stock and Company Warrant (the "Certificates") shall pass, only upon delivery of the Certificates to Parent and shall otherwise be in such form and contain such other provisions as Parent may reasonably specify, including an acknowledgement by Warrantholders that the Company Warrants will be deemed cancelled upon consummation of the Merger, and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the Merger Consideration. Upon surrender of such Certificate or Certificates for cancellation to Parent or to such agent or agents as may be appointed by Parent, together with the Letter of Transmittal, duly executed, for each share formerly represented by each such Certificate, Parent shall promptly deliver to each such Stockholder and Warrantholder (A) by check or by wire transfer of immediately available funds for amounts in excess of \$5,000,000, the Cash Consideration or the cash portion of the Warrant Consideration payable to such Stockholder with respect to such shares pursuant to Section 4.1 hereof, and (B) certificates representing the Share Consideration or the share portion of the Warrant Consideration issuable to such holder with respect to such shares pursuant Section 4.1 hereof, and after the Effective Date, if applicable, any dividends or other distributions with respect to Parent Common Stock to be issued or paid pursuant to Section 4.3 hereof.

(b) In the event that any certificates for any shares of Parent Common Stock are to be issued in a name other than that in which the Certificates representing shares of Company Common Stock or Company Warrants surrendered in exchange therefor are registered, it shall be a condition of such exchange that the certificate or certificates so surrendered shall be properly endorsed with a medallion guarantee or be otherwise in proper form for transfer and that the Person requesting such exchange shall pay to Parent any transfer or other taxes required by reason of the issuance of certificates for such shares of Parent Common Stock in a name other than that of the registered holder of the Certificate surrendered, or shall establish to the satisfaction of the Company that such tax has been paid or is not applicable.

(c) Until surrendered, Certificates representing shares of Company Common Stock or Company Warrants shall represent solely the right to receive the Merger Consideration, and after the Effective Date, if applicable, any dividends or other distributions with respect to Parent Common Stock to be issued or paid pursuant to Section 4.3 hereof, in each case, without any interest thereon with respect to Parent Common Stock. Neither Parent nor any Party hereto shall be liable to a holder of shares of Company Common Stock or Company Warrants for any amount properly delivered to a public official pursuant to any applicable escheat laws. If any Certificates representing shares of Company Common Stock entitled to be exchanged for Merger Consideration pursuant to Section 4.1 hereof shall not have been surrendered for such exchange prior to the first anniversary of the Closing Date, such shares of Company Common Stock shall, to the extent permitted by applicable law, be deemed to be cancelled and no Merger Consideration shall be due to the holder thereof. Notwithstanding the foregoing, neither Parent nor any Party hereto shall be liable to a holder of shares of Company Common Stock for any amount properly delivered to a public official pursuant to any applicable escheat laws.

(d) Each of the Surviving Company and Parent shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this Article IV such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of federal, state, local or foreign tax law. If the Surviving Company or Parent, as the case may be, so withholds amounts, such amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the shares of Company Capital Stock in respect of which the Surviving Company or Parent, as the case may be, made such deduction and withholding.

Section 4.3. Dividends and Other Distributions. All shares of Parent Common Stock to be issued pursuant to the Merger shall be deemed issued and outstanding on the Effective Date and whenever a dividend or other distribution is declared by Parent in respect of the Parent Common Stock, the record date for which is on or after the Effective Date, that declaration shall include dividends or other distributions in respect of all shares issuable pursuant to this Agreement. No dividends or other distributions that are declared or made on Parent Common Stock will be paid to Persons entitled to receive certificates representing Parent Common Stock pursuant to this Agreement until such Persons surrender their Certificates representing Company Common Stock or Company Warrants. Subject to the effect of applicable laws, following surrender of any such Certificate, there shall be issued and/or paid to the holder of the certificates representing whole shares of Parent Common Stock, as the case may be, issued in exchange therefor, without interest, (i) at the time of such surrender, the dividends or other distributions with a record date after the Effective Date and a payment date on or prior to such time of surrender payable with respect to such whole shares of Parent Common Stock and not paid and (ii) at the appropriate payment date, the dividends or other distributions payable with respect to such whole shares of Parent Common Stock with a record date after the Effective Date but with a payment date subsequent to surrender.

Section 4.4. No Fractional Shares. No certificates or scrip representing less than one share of Parent Common Stock shall be issued upon the surrender for exchange of Certificates representing Company Common Stock or Company pursuant to Section 4.1 hereof. Any fractional shares that would otherwise be issuable pursuant to Section 4.1 hereof shall be rounded up to the nearest whole number.

Section 4.5. Lost, Stolen or Destroyed Certificates. In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and an indemnity agreement in an amount determined by Parent or Parent agent by such Person at such Person's sole cost and expense against any claim that may be made against it with respect to such Certificate, Parent will pay and issue, in exchange for such lost, stolen or destroyed Certificate, the Merger Consideration in accordance with Section 4.2 hereof in respect of the shares represented by such lost, stolen or destroyed Certificate.

Section 4.6. Closing of the Company's Transfer Books. At the Effective Date, the stock transfer books of the Company shall be closed and no transfer of shares of Company Common Stock or Company Warrants shall be made thereafter. In the event that, after the Effective Date, Certificates are presented to the Surviving Company, they shall be cancelled and exchanged for Merger Consideration in accordance with this Article IV.

Section 4.7. Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place (i) at the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, at 9:00 A.M. local time on the day which is the third business day after the day on which the last of the conditions set forth in Articles X, XI, and XII is fulfilled or waived in writing (other than those conditions that are not capable of being satisfied until the Closing, but subject to the waiver in writing or satisfaction of these conditions) or (ii) at such other time and place as Parent and the Company shall agree in writing (the "Closing Date").

Section 4.8. Additional Actions. If, at any time after the Effective Date, the Surviving Company shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Company its right, title or interest in, to or under any of the rights, properties or assets of Merger Sub or the Company or otherwise to carry out this Agreement, the officers and directors of the Surviving Company shall be authorized to execute and deliver, in the name and on behalf of Merger Sub or the Company, as the case may be, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of Merger Sub or the Company, as the case may be, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Company or otherwise to carry out this Agreement.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Parent and Merger Sub as follows:

Section 5.1. Corporate Organization. Each of the Company and its Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite corporate, limited liability company or

limited partnership power (as the case may be) to own its properties and assets and to conduct its business as now conducted. Copies of the Company Organizational Documents and the organizational documents of each Subsidiary of the Company, with all amendments thereto to the date hereof, have been made available to Parent or its representatives, and such copies are accurate and complete as of the date hereof. A complete and correct chart showing the Company and all of its direct and indirect Subsidiaries is set forth on Schedule 5.1.

Section 5.2. Qualification to Do Business. Each of the Company and its Subsidiaries is duly qualified to do business as a foreign corporation, limited liability company or partnership (as the case may be) and is in good standing in every jurisdiction in which the character of the properties owned or leased by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so qualified or in good standing would not have a Company Material Adverse Effect. Schedule 5.2 sets forth for each of the Company and its Subsidiaries all jurisdictions in which each of the Company and its Subsidiaries are qualified to do business.

Section 5.3. No Conflict or Violation. The execution, delivery and performance by the Company of this Agreement does not and will not (i) violate or conflict with any provision of any Company Organizational Document or any of the organizational documents of the Subsidiaries of the Company, (ii) violate any provision of law, or any order, judgment or decree of any Governmental Entity, (iii) except as set forth in Schedule 5.3, violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contract or result in the creation or imposition of any Lien (other than any Permitted Lien) upon any of the assets, properties or rights of either of the Company or any of its Subsidiaries or result in or give to others any rights of cancellation, modification, amendment, acceleration, revocation or suspension of any of the Contracts or obligations thereunder, or Licenses and Permits or (iv) violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any contract, agreement or instrument to which the Company or any of its Subsidiaries is a party or by which it is bound or to which any of its properties or assets is subject except in each case with respect to clauses (iii) and (iv), for any such violations that would not have a Company Material Adverse Effect.

Section 5.4. Consents and Approvals. No consent, waiver, authorization or approval of any Governmental Entity, and no declaration or notice to or filing or registration with any Governmental Entity, is required in connection with the execution and delivery of this Agreement by the Company or the performance by the Company or its Subsidiaries of their obligations hereunder or thereunder, except for (i) the filing of Notification and Report Form under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as amended (the "HSR Act") (ii) the consents, waivers, authorizations or approvals of any Governmental Entity set forth on Schedule 5.4 and (iii) such consents, waivers, authorizations, approvals, declarations, notices, filings or registrations, which if not obtained or made would not have, a Company Material Adverse Effect or prevent or materially delay the consummation of the transactions contemplated by this Agreement.

Section 5.5. Authorization and Validity of Agreement. The Company has all requisite power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery by the Company of this Agreement and the

consummation by the Company of the transactions contemplated hereby have been duly and validly authorized and unanimously approved by the Company's Board of Directors, no other action of the Company's Board of Directors or corporate proceeding on the part of the Company or any of its Subsidiaries are necessary to authorize this Agreement, and, subject to obtaining the approval and adoption of this Agreement and approval of the Merger by the holders of a majority of the shares of the Company Common Stock outstanding (the "Required Merger Stockholder Vote"), no other action of the Company's Board of Directors or corporate action on the part of the Company or any of its Subsidiaries or stockholders is necessary to consummate the transactions contemplated hereby. The Merger has been declared advisable by the Board of Directors of the Company. This Agreement has been duly executed by the Company and, assuming due execution and delivery by Parent and Merger Sub, shall constitute its valid and binding obligation, enforceable against it in accordance with its terms, subject to (i) the effect of bankruptcy, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting the enforcement of creditors' rights generally, (ii) general equitable principles (whether considered in a proceeding in equity or at law) and (iii) an implied covenant of good faith and fair dealing.

Section 5.6. Capitalization and Related Matters.

(a) As of the date hereof, the authorized capital stock of the Company consists of 25,000,000 shares of Company Common Stock, of which 8,555,686 shares are issued and outstanding, and 5,000,000 shares of Company Preferred Stock, of which no shares are issued and outstanding. Schedule 5.6 sets forth (i) the names of the record owners of the Company Common Stock and the number of shares held by each owner and (ii) the names of all holders of warrants to purchase shares of Company Common Stock, the number of shares of Company Common Stock purchasable thereunder and the exercise price(s) therefor. The Company Common Stock (i) have been duly authorized and validly issued and are fully paid and nonassessable and (ii) were issued in compliance with all applicable federal and state securities laws. Except as set forth above or on Schedule 5.6, no shares of capital stock of the Company are outstanding; the Company does not have outstanding any securities convertible into or exchangeable for any shares of capital stock, including Company Options, any rights to subscribe for or to purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or known claims of any other character relating to the issuance of, any capital stock, or any stock or securities convertible into or exchangeable for any capital stock; and except with respect to the obligation to purchase the Company Warrants pursuant to a put right held by the Warrantholders with respect to the Company Warrants, the Company is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire, or to register under the Securities Act, any shares of capital stock. The Company does not have outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or convertible into or exercisable for securities having the right to vote) with the stockholders of the Company on any matter. True and correct copies of each Company Warrant agreement and the form of Company Warrant thereto has been made available to Parent or its representatives, and such copies are accurate and complete as of the date hereof.

(b) All of the outstanding shares of capital stock, or membership interests or other ownership interests of, each Subsidiary of the Company, as applicable, is validly issued.

fully paid and nonassessable and is owned of record and beneficially by the Company, directly or indirectly. The Company has, as of the date hereof and shall have on the Closing Date, valid and marketable title to all of the shares of capital stock of, or membership interests or other ownership interests in, each Subsidiary of the Company, free and clear of any Liens other than Permitted Liens. Such outstanding shares of capital stock of, or membership interests or other ownership interests in, the Subsidiaries of the Company, as applicable, are the sole outstanding securities of such Subsidiaries; the Subsidiaries of the Company do not have outstanding any securities convertible into or exchangeable for any capital stock of, or membership interests or other ownership interests in, such Subsidiaries, any rights to subscribe for or to purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any other character relating to the issuance of, any capital stock of, or membership interests or other ownership interests in, such Subsidiaries, or any stock or securities convertible into or exchangeable for any capital stock of, or membership interests or other ownership interests in, such Subsidiaries; and neither the Company or any of its Subsidiaries is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire, or to register under the Securities Act, any capital stock of, or membership interests or other ownership interests in, any Subsidiary of the Company.

Section 5.7. Subsidiaries and Equity Investments. Except as set forth in Schedule 5.7, the Company and its Subsidiaries do not directly or indirectly own, or hold any rights to acquire, any capital stock or any other securities, interests or investments in any other Person other than investments that constitute cash or cash equivalents.

Section 5.8. Financial Statements; Debt.

(a) The Company has heretofore made available to Parent (a) copies of the audited consolidated balance sheet of the Company and its Subsidiaries as of December 31, 2005 and 2004, together with the related consolidated statements of operations, stockholders' equity (deficit) and cash flows for the periods then ended and the notes thereto, accompanied by the reports thereon of Grant Thornton LLP, (b) copies of the unaudited consolidated balance sheets of the Company and its Subsidiaries as of March 31, 2006 ("Interim Balance Sheet"), together with the related consolidated unaudited statements of operations, stockholders' equity (deficit), and cash flow for the period then ended, and the notes thereto (all the financial statements referred to in clauses (a) and (b) above being hereinafter collectively referred to as the "Financial Statements"). The Financial Statements, including the notes thereto, (i) were prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby and (ii) present fairly in all material respects the financial position, results of operations and changes in financial position of the Company and its Subsidiaries as of such dates and for the periods then ended (subject, in the case of the unaudited interim Financial Statements described in clause (b) above, to normal year-end audit adjustments consistent with prior periods).

(b) Since March 31, 2006, as of the date hereof, there has been no material increase in the aggregate amount of Debt outstanding.

(c) Neither the Company nor any of its Subsidiaries has any off balance sheet arrangement (as defined in Item 303(a)(4)(ii) of Regulation S-K under the Securities Act).

Section 5.9. Absence of Certain Changes or Events.

(a) Except as set forth in Schedule 5.9, since December 31, 2005, there has not been:

- (i) any Company Material Adverse Effect;
- (ii) any material loss, damage, destruction or other casualty to the assets or properties of either of the Company or any of its Subsidiaries (other than any for which insurance awards have been received or guaranteed);
- (iii) any change in any method of accounting or accounting practice of either of the Company or any of its Subsidiaries except for any such change required by reason of a concurrent change in GAAP; or
- (iv) any loss of the employment, services or benefits of the chief executive officer of the Company and members of the Company's senior management who report directly to such chief executive officer.

(b) Since December 31, 2005, each of the Company and each of its Subsidiaries has operated in the ordinary course of its business and consistent with past practice and, except as set forth in Schedule 5.9, has not:

- (i) incurred any material obligation or liability (whether absolute, accrued, contingent or otherwise) except in the ordinary course of business and consistent with past practice;
- (ii) failed to discharge or satisfy any material Lien or pay or satisfy any material obligation or liability (whether absolute, accrued, contingent or otherwise), other than Permitted Liens and liabilities being contested in good faith and for which adequate reserves have been provided;
- (iii) mortgaged, pledged or subjected to any Lien (other than Permitted Liens) any of its assets, properties or rights;
- (iv) sold or transferred any of its material assets, including any sale, license or lease of any indefeasible rights of use of capacity or infrastructure ("IRUs"), or cancelled any material debts or claims or waived any material rights;
- (v) disposed of any material patents, trademarks or copyrights or any material patent, trademark or copyright applications;
- (vi) defaulted on any material obligation;
- (vii) entered into any transaction material to its business, except in the ordinary course of business and consistent with past practice;